

STANDING ORDER GOVERNING
FINAL PRETRIAL CONFERENCE

It is ORDERED that the following requirements shall prevail for Fed.R.Civ.P. 16(d) Final Pretrial Conferences set before Magistrate Judge Bert W. Milling, Jr.

1. Counsel shall confer and shall prepare a single proposed Pretrial Order in the form attached, which must be filed with the Clerk of Court at least five (5) days before the pretrial conference.

2. Counsel shall make a good faith effort to stipulate as to the following:

A. Jurisdiction; and

B. Propriety of parties, correctness of identity of legal entities, necessity for appointment of guardian ad litem, guardian, administrator, etc., and validity of appointment if already made, and correctness of designation of party as partnership, corporation or individual d/b/a trade name.

C. If there is a dispute regarding A. or B. above, counsel shall certify the question to the Court for resolution at the conference.

3. At the Conference counsel will discuss settlement potential with the Court. Counsel shall confer and engage in meaningful settlement discussion prior to the pretrial conference, and then be prepared to discuss the status of any settlement negotiations, and whether any method of Alternative Dispute Resolution would be beneficial to resolving the case prior to trial.

4. The proposed Pretrial Order shall contain:

A. A brief but comprehensive written statement of the case, in sufficient form that if the Court elects to do so, it can be read to the jury (e.g., "This is a Title VII action (a Jones Act action; a negligence action; etc.). The plaintiff claims that _____. The defendant claims that _____.")

B. For each claim asserted, a listing of the legal elements of each claim derived from the pattern jury instructions or applicable and controlling case law interpreting the claim.

C. A statement of the agreed facts specifically related to the claim.

D. A statement of the disputed facts specifically related to the claim.¹

E. Fed.R.Civ.P. 16(d) requires the parties to "formulate a plan for trial, including a program for facilitating the admission of evidence", so that the Court may consider "an order establishing a reasonable limit on the time allowed for presenting evidence." Fed.R.Civ.P. 16(c)(15). Therefore the parties shall include in the Joint Pretrial Order, not only an estimate of the number of trial days required, but also a statement of the number of witnesses reasonably expected to testify on behalf of each party. See ¶ 4.I. below.

F. A statement indicating whether the case is a jury or non-jury case. If a jury case, whether the jury trial is applicable to all aspects of the case or only to certain issues, which shall be specified. In view of Fed.R.Civ.P. 48 allowing not fewer than six and not more than twelve jurors, the parties shall include a statement of their respective (or collective, if they can agree) positions with regard to the number of jurors they request be selected to sit in this case. If the parties are unable to agree, the Court will cause a jury of eight to be selected.

¹ It is not necessary for the parties to set forth every possible variation of every factual dispute involved in the case for fear that they may waive the presentation of some evidence at trial. The Court is interested in a concise statement of the facts that are disputed and undisputed, specifically related to the legal claims that are to be litigated.

(1) Voir Dire Questions. Proposed voir dire questions and objections thereto shall be included in the Joint Pretrial Order. Each party shall be limited to twenty-five (25) questions. If requested, lawyer voir dire may be permitted using court-approved questions.

(2) Jury Instructions. No later than seven (7) days prior to trial, the parties shall file a jointly prepared set of jury instructions. For any disputed instructions, the parties may file separate instructions designated accordingly ("Plaintiff's proposed jury instruction number ____;" etc.)

G. A list and description of any legal issues or motions (including motions in limine) pending or contemplated.

H. If a party desires to offer deposition testimony into evidence at the trial, that party shall designate only those relevant portions of the deposition which the party wishes read at trial and advise opposing counsel of same. Opposing counsel shall then designate those relevant portions of such deposition which counsel wishes to offer in evidence. All objections to any such testimony shall be made in writing and submitted with the Joint Pretrial Order. The parties should bring to the Court's attention at the pretrial conference whether any specific rulings by the Court will facilitate the conduct of the trial or ongoing settlement negotiations.

I. Counsel shall list the names and addresses of all witnesses who are expected to testify at the trial. Witness lists shall be kept to a reasonable minimum; additional witnesses may be added only for good cause shown and on written motion. With respect to expert witnesses, counsel shall furnish the Court and opposing counsel with a curriculum vitae of such experts. When an expert witness is called to the stand, counsel will read into the record the expert's qualifications and inquire of the expert whether the qualifications are correct. If correct, the next question will be relative to the merits of the case. In addition, counsel shall furnish the Court and opposing counsel with a brief statement of the opinion or opinions which counsel expects to elicit from such expert. Any objections to an expert's qualifications shall be separately set forth in the Joint Pretrial Order.

J. Whenever possible, the parties shall stipulate to the amount and type of damages. If the parties are unable to agree, then the plaintiff shall state with specificity the amount and category of damages (e.g., doctor and hospital bills \$____; lost wages \$____; pain and suffering \$____; etc.). The listing of such damages shall not constitute an agreement as to the recoverability of same unless so stated.

K. Each party shall list on this Court's exhibit form (or on a form substantially similar) and furnish opposing counsel, for copying and inspection, all exhibits which are to be offered in evidence. Objections to exhibits shall be noted in the Joint Pretrial Order, setting forth the nature of the objection and the authority supporting same. **Failure to comply shall constitute a waiver of any such objection.** All exhibits to which there is no objection shall be deemed admitted. Except for good cause shown, the Court will not permit the introduction of an exhibit unless it has been listed in the Pretrial Order. Markers obtained from the Clerk shall be attached to all exhibits, and such exhibits delivered to the Clerk immediately prior to the commencement of trial.

5. Counsel are reminded that **the case is to be ready for trial at the time of the Pretrial Conference.** The Pretrial Order shall constitute the final statement of the claims to be litigated, shall govern the conduct of the trial, and shall constitute the basis for any relief afforded by the Court. However, the Pretrial Order may be amended at any time by the Court or on motion of a party for good cause to avoid manifest injustice.

6. Failure to comply with the provisions of this Order or to attend the Pretrial Conference may result in the following sanctions:
(a) dismissal of the action for failure to prosecute, if such failure occurs on the part of the plaintiff; (b) entry of default judgment if

such failure occurs on the part of the defendant, or (c) any other action as deemed appropriate by the Court.

DONE this KEYBOARD().

BERT W. MILLING, JR.
UNITED STATES MAGISTRATE JUDGE

FOR THE PURPOSE OF PREPARING THE
JOINT PRETRIAL ORDER, IT IS RECOMMENDED
THAT THE FOLLOWING FORMAT BE USED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN OR NORTHERN DIVISION

STYLE OF CASE

(Do not use "et al" -- list all Plaintiffs and all Defendants)

PRETRIAL ORDER

There is no contest as to the jurisdiction of this Court or as to the correctness of the named defendant(s) or the named plaintiff(s).

I.

STATEMENT OF THE CASE

(See Paragraph 4.A. of Pretrial Order)

II.

TRIABLE CLAIMS

A. (State the legal claim and defense to be tried, e.g., Title VII, Jones Act, negligence, breach of contract, contributory negligence, etc.)

1. LEGAL ELEMENTS OF CLAIM (See paragraph 4.B. of Pretrial Order).

2. AGREED FACTS (as to this legal claim)
(See Paragraph 4.C. of Pretrial Order).

3. DISPUTED FACTS (as to this legal claim) (See Paragraph 4.D. of Pretrial Order).

B. (Statement of second legal claim to be tried)

1. LEGAL ELEMENTS.
2. AGREED FACTS.
3. DISPUTED FACTS.

C. (Third claim)

1. LEGAL ELEMENTS.
2. AGREED FACTS.
3. DISPUTED FACTS.

III.

TRIAL TIME

It is estimated that this case will take _____ days to try, exclusive of jury selection time. The plaintiff expects to call _____ witnesses, and the defendant expects to call _____witnesses.

IV.

TYPE OF TRIAL

JURY

NON-JURY

The parties request a jury of _____.

The parties' proposed voir dire questions are attached.

V.

MOTIONS

(Identify any pending motions, etc., as per Paragraph 4.G. of the Pretrial Order.)

VI.

DEPOSITIONS

(List those portions of depositions to be used at trial. State any objections. See Paragraph 4.H. of the Pretrial Order.)

VII.

WITNESSES

A. The Plaintiff will or may call the following witnesses:

- 1.
- 2.
- 3.

Of the named witnesses, the following will be called as experts:

- (a) (listing qualifications)
- (b) (listing qualifications)

Defendant contests the qualifications of _____

_____. (State reasons)

B. The defendant will or may call the following witnesses:

- 1.
- 2.
- 3.

Of the above named witnesses, the following will be called as experts:

- (a) (listing qualifications)
- (b) (listing qualifications)

The plaintiff contests the qualifications of _____

_____. (State reasons)

VIII.

DAMAGES

(See Paragraph 4.J. of Pretrial Order)

IX.

EXHIBITS

(List exhibits numerically on the Court's form with a brief description of each exhibit. All exhibits shall be marked to correspond with the exhibit list. See Paragraph 4.K. of Pretrial Order.)

X.

List names of attorneys in any represented law firm or attach copy of the firm's letterhead.

TRIAL DATE

This case is set for trial on _____.

Attorney for Plaintiff

Attorney for Defendant

APPROVED and SO ORDERED this _____ day of _____,
19____.

BERT W. MILLING, JR.
UNITED STATES MAGISTRATE JUDGE